

**BUSINESS REPORT**

**MONTANA HOUSE OF REPRESENTATIVES  
61st LEGISLATURE - REGULAR SESSION**

**HOUSE TRANSPORTATION COMMITTEE**

**Date:** Monday, February 16, 2009  
**Place:** Capitol

**Time:** 3:00 pm  
**Room:** 455

**BILLS and RESOLUTIONS HEARD:**

Prefix (HB, HR, HJR, SB, SR, or SJR) and number. Add Postponed (PP) when appropriate:

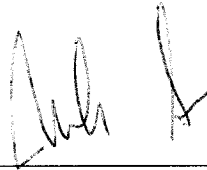
HB 472, HB 531, HB 563, HB 567

**EXECUTIVE ACTION TAKEN:**

Prefix (HB, HR, HJR, SB, SR, or SJR) and number. Enter P(pass) F(failed) DPAA (do pass as amended) BC(be concurred in) BCAA (be concurred in as amended):

None

**COMMENTS:**



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REP. Jon Sonju, Chairman

**HOUSE OF REPRESENTATIVES**  
**Roll Call**  
**Transportation COMMITTEE**

DATE: 2-16-2009

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT/ EXCUSED</u>
Vice Chair Vance	X	
Vice Chair Ebinger	X	
Representative Arntzen		X
Representative Barrett	X	
Representative Berry	X	
Representative Kottel	X	
Representative Randall	X	
Representative MacDonald	X	
Representative Taylor	X	
Representative Roundstone	X	
Representative Wilson	X	
Chairman Sonju	X	

**Montana House of Representatives  
Visitors Register**

**Transportation**

**Date** 2/14/2009

**Bill No.** HB 523 **Sponsor(s)** Rep. Kottel

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Name and Address	Representing	Support	Oppose	Inf.
Anthony Johnson	MACO/Ponderosa County	X		
GORDON MORRIS	LEWIS & CLARK CO MAC ROAD SUPPLY	X		

**Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.**

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# Montana House of Representatives Visitors Register

## Transportation

**Date** 2/16/2009

Bill No. HB 531 Sponsor(s) Rep. Noonan

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**Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.**

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# Montana House of Representatives Visitors Register

## Transportation

**Date** 2/16/2009

Bill No. HB 472 Sponsor(s) Rep. Barrett

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[illegible]

**Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.**

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**Montana House of Representatives  
Visitors Register**

**Transportation**

**Date** 2/16/2009

**Bill No.** HB 567 **Sponsor(s)** Rep. Sonju

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Name and Address	Representing	Support	Oppose	Inf.
Richard Elwood <sup>10065 Up</sup> <i>Wendy</i>	<i>Auto Alliance</i>		✓	
Bruce G. <i>sonju</i>	MTADA	X		
AC Bullen	MTADA	X		
Don KALTSchmidt Jr	MTADA	X		
Gary Brayke	MTADA	X		
Jim Stanger	MTADA	X		
Robert L DeRata	MTADA	X		
<i>Tim H. Wood</i>	MTADA	X		
<i>John McDonald</i>	Auto Alliance		✓	

**Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.**

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**To: House Transportation Committee**  
**From: John MacDonald, lobbyist for Alliance of Automobile Manufacturers,**  
**and Mona Jamison, Lobbyist for General Motors Corporation**  
**Date: February 16, 2009**  
**Re: HB 567 - Proposed Amendments**

**#1 Definition of Franchise:**

The franchise agreement should be the contract and any agreed-upon amendments. The proposed definition creates uncertainty regarding what is in the agreement and is unnecessary. The purpose of the laws is for the Legislature to define what conduct by manufacturers or dealers is or is not appropriate, and the Legislature does not need to change the franchise agreement.

**61-4-201. Definitions.**

**Suggested amendment:**

**Subsection 6, Lines 29 and 30**

Strike: "new requirements, new programs or new rules"

**#2 Dualling:**

This provision takes away any input by the manufacturer into a dealer's decision to combine that manufacturer's products with the product of other manufacturers under the same roof. We believe this is unreasonable. A manufacturer should be able to object to a dualling proposal if it has reasonable business considerations supporting its decision. For example, a large Toyota, Chevrolet, Ford or BMW dealership that is profitable should not be able to add a number of small line-makes that dilute its focus on its core products. This is unfair to the manufacturers who have made a significant investment in their products, and is not warranted by the dealer.

Considering the billions of dollars invested by a manufacturer in developing its products, the manufacturer should have some reasonable input into how its brands are represented, and if a manufacturer objects to a proposal the burden is on the manufacturer to demonstrate the reasonableness of its position.

**61-4-208. Prohibited acts.**

**Suggested amendment:**

- (1) A franchisor, manufacturer of new motor vehicles, a factory branch, a distributor, a distributor branch, an importer, a field representative, an officer, an agent, or any representative of the persons or entities listed may not:

(a) coerce, attempt to coerce, or require a new motor vehicle dealer or transferee of a new motor vehicle dealer to:

(iv) either establish or maintain exclusive facilities, personnel, or display space or to abandon an existing franchise relationship with another manufacturer ~~that was established before April 8, 1997, when those requirements are not justified by reasonable business considerations; unless justified by the manufacturer based upon reasonable business considerations, in order to keep or enter into a franchise agreement or to participate in any program discount, credit, rebate, or sales incentive;~~

**Deleted:** , proposed new motor vehicle dealer.

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~~(v) require, coerce, or attempt to coerce a new motor vehicle dealer, proposed new motor vehicle dealer, or transferee to refrain from participation in the management of, investment in, or the acquisition of any other line of new motor vehicle or related products, as long as the new motor vehicle dealer, proposed new motor vehicle dealer, or transferee maintains a reasonable line of credit for each franchise and the new motor vehicle dealer, proposed new motor vehicle dealer, or transferee remains in substantial compliance with reasonable facilities requirements of the manufacturer in size and configuration. The reasonable facilities requirements may not include any requirement that a new motor vehicle dealer, proposed new motor vehicle dealer, or transferee establish or maintain exclusive facilities, personnel, or display space.~~

~~(v)(vi) refrain from participation in the management of, investment in, or acquisition of any other line of new motor vehicle or related products if the new motor vehicle dealer, proposed new motor vehicle dealer, or transferee maintains a reasonable line of credit for each make or line of new motor vehicles and remains in compliance with any reasonable capital standards and facility requirements of the manufacturer.~~

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### **#3 Fair Market Value upon termination of a line-make:**

We recognize that the current economic situation has hit dealers hard and unfortunately a number of dealers may exit the business as a result. This is a serious concern for manufacturers because we value strong dealers. We also recognize that the current economic difficulties may result in the termination of one or more line-makes and that this is a significant concern to dealers. The solution, however, is not state legislation guaranteeing dealers the fair market value of the dealership potentially up to its value using a prior year.

MADA's legislative proposal is akin to consumers saying the housing/financing crisis was not their fault, so the government should reimburse them for the lost value of their 401(k)s in the past year. Thus, we must oppose these amendments in their current form. Based upon your concerns, and in the spirit of trying to reach a reasonable compromise, we request that MADA consider the following:

#### **61-4-205. Limitations on cancellation and termination.**

##### **Suggested amendment:**

- (9) A franchisor, manufacturer, or distributor considered incapable of performing under subsection (8) shall compensate the effected dealer in an amount equal to the greater of:
- (a) ~~the actual pecuniary loss that the dealer and its owners suffered as a result of the termination, cancellation, or failure to renew; or~~
  - (b) ~~the higher of the fair market value of the franchise on the following dates:~~
    - (i) ~~the date the franchisor announces the action that results in effective date of the termination, cancellation, or failure to renew;.~~
    - (ii) ~~the date 1 year prior to the effective date of termination, cancellation, or failure to renew; or~~
    - (iii) ~~the day prior to the date on which the franchisor, manufacturer or distributor announces the action which results in the termination, cancellation or failure to renew.~~

### **#4 Penalties**

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The dealer has the right to sue a manufacturer for damages. The right to sue should not be extended to the proposed transferee, who has no contractual relationship with the manufacturer

61-4-210

**Suggested amendment:**

In Line 18, strike "proposed new motor vehicle dealer"

**#5 Manufacturer obligations after termination.**

The provision as drafted does not make clear that the manufacturer's obligation to continue to supply parts and allow the dealer to continuing servicing the manufacturer's vehicles for a period of 5 years after termination is limited to situations where the termination is based on the discontinuation or sale of a line-make only. If a dealer is terminated for other reasons it is not appropriate to require a manufacturer to continue to supply him with vehicle parts.

The language as proposed in the bill would require a manufacturer to continue to supply a motor vehicle dealer with parts and reimburse for service for 5 (five) years after a dealer has been terminated. We understand that the vehicles remain in the marketplace for several years and will require parts and service for a reasonable amount of time post-sale. In addition, we feel it is reasonable as an alternative to allow other new motor vehicle dealers of the manufacturer to service and retain parts inventory for the discontinued line for the 5 year period.

**61-4-205. Limitations on cancellation and termination.**

**Suggested amendment:**

(11) A franchisor, manufacturer or distributor is rendered incapable of performing under a franchise agreement for purposes of subsection (8) if it is incapable of performing its obligations with respect to any line make even though it is capable of performing its obligations with respect to other line makes covered by the same agreement shall:

(12)(a) The franchisor manufacturer or distributor shall authorize the franchisee, or another new motor vehicle dealer of the manufacturer or distributor in the area to continue servicing and supplying parts, including service and parts pursuant to a warranty issued by the franchisor, for any goods or services marketed by the franchisee pursuant to the motor vehicle franchise for a period of not less than five years from the effective date of the termination, cancellation or nonrenewal and shall continue to reimburse the franchisee for warranty parts and service in an amount and on terms no less favorable than those in effect prior to the termination, cancellation or nonrenewal and in accordance with 61-4-204.

(13)(b) The franchisor manufacturer or distributor shall continue to supply the franchisee or another new motor vehicle dealer of the manufacturer or distributor in the area with replacement parts for any goods or services marketed by the franchisee pursuant to the motor vehicle franchise for a period of not less than five years from the effective date of the termination, cancellation or nonrenewal, at the same price and terms as the franchisor supplies them to the remaining franchisees of the franchisor, or, if there are no such remaining franchisees, at a price and on terms no less favorable than those in effect prior to the termination, cancellation or nonrenewal.

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## **#6 Warranty cost recovery.**

Legislation should not leave the reimbursement price for warranty parts solely up to the unbridled discretion of the dealer in determining what is a legitimate and reasonable reimbursement amount.

Making it a statutory violation for a manufacturer to require a dealer to pay a surcharge when the dealer seeks to recover an excessive reimbursement amount for parts used, unfairly mandates that a manufacturer subsidize any unreasonably high warranty parts price the dealer chooses to charge.

Remember, only new vehicle dealers are authorized to perform warranty repairs. It is a captive business for them with no competition from independent repair shops and no selling expense. The higher dealer warranty prices for parts results in increased costs for purchasing, maintaining and repairing new motor vehicles. These costs ultimately are passed on to car buyers in the form of higher new car prices.

### **61-4-204. Filing agreement -- product liability.**

#### **Suggested amendment:**

~~(5)(f) — A manufacturer or distributor may not otherwise recover, or seek to recover, any of its costs for compensating a dealer for warranty work, including labor and parts, or for the dealer's participation in incentives by imposing on the dealer any charge or surcharge to the wholesale price paid by the dealer to the manufacturer or distributor for any product, including motor vehicles and parts.~~

## **# 7 Market Penetration**

~~This subparagraph 2(d) should be deleted because it raises questions of whether a dealer is accountable for sales performance. Current law adequately addresses a manufacturer's obligation to demonstrate good cause to terminate a franchise agreement.~~

### **Section 61-4-20. Determination of good cause**

~~Strike Line 5, 2(d) "the desire of a franchisor or a franchisor's representative for market penetration~~

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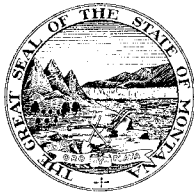
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OFFICE OF THE GOVERNOR  
BUDGET AND PROGRAM PLANNING  
STATE OF MONTANA



BRIAN SCHWEITZER  
GOVERNOR

CAPITOL BUILDING - P.O. Box 200802  
HELENA, MONTANA 59620-0802

MEMORANDUM

To:  Representative Barrett  
Representative Sonju, Chair  
Members of the Transportation Committee

From: David Ewer, Budget Director

Re: Opposition to HB 472, Clarify state and local highway maintenance obligations

Date: February 16, 2009

Dear Representative Barrett and members of the committee: Given budget constraints, I respectfully go on record as opposing HB 472 for fiscal reasons. My opposition is not based on any intrinsic merits of HB 472.

The Executive Budget currently has a structural surplus, however, unlike the 2007 Session, which had over \$80 million in projected revenues over the Administration's ongoing general fund expenditure proposals, the current budget is very tight. While the Administration insisted on a spending cap to preserve the structural surplus of \$80 million, the modification or rejections of some Administration proposals created substantial fiscal 'space' for other legislative priorities.

The Schweitzer Administration fully understands and respects the legislative process and a legislator's prerogative to achieve any legislation he or she so desires. Given that it is very early in the 2009 session and this bill's hearing date, it is certain that the legislature will take later action that will either free up or additionally constrain budget capacity. But again, the importance of maintaining a basic level of public safety, health, and education service levels require this opposition.

This letter is intended to benefit, not impede communications. I am eager for any feed back as to how we can maximize effective communications.

OFFICE OF THE GOVERNOR  
BUDGET AND PROGRAM PLANNING  
STATE OF MONTANA

BRIAN SCHWEITZER  
GOVERNOR



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Amendments to House Bill 567  
Introduced Copy

Requested by Montana Automobile Dealers Association

Prepared by Bruce M. Spencer  
February 12, 2009

1. Page 6, line 11.

Following: not

Insert: penalize a dealer,

2. Page 9, line 19.

Following: agreement

Insert: pursuant to subsection 8 of this section

3. Page 9, line 26.

Following: franchisee

Insert: terminated pursuant to subsection 8 of this section

4. Page 10, line 3.

Following: agreement

Insert: pursuant to this subsection 8 of this section

-- End --